THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.3989 of 2006

Date : 21-9-2006

Between:

Fishermen Co-operative Society, Kistapuram
represented by its President
Sunkara Venkateswarlu s/o.Kotaiah ..
Petitioner

And

The Divisional Panchayat Officer,
Khammam, Khammam District
and others ..
Respondents

THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.3989 of 2006

ORDER:

1. Heard Ms.Vidyavathi, Counsel representing the petitioner, learned Assistant Government Pleader representing respondents 3 and 4 and Sri Prem Sagar, Counsel representing 4th respondent and Sri Durga Prasad, representing Sri Sesha Sai, Counsel representing 5th respondent.

2. The Writ Petition is filed for a Writ of Mandamus declaring the action of respondents in not granting fishing rights to the petitioner-Fishermen Co-operative Society, Kistapuram as bad, arbitrary and contrary to G.O.Ms.No.343, dated 10-4-1978 and violative of Articles 14, 19 and 21 of the Constitution of India and violative of principles of natural justice and to pass such other suitable orders.

3. Ms.Vidyavathi, the learned Counsel representing the writ petitioner had taken this Court through the contents of the affidavit filed in support of the Writ Petition and would submit that the impugned action of the respondents is violative of G.O.Ms.No.343, dated 10-4-1978 and also contrary to the provisions of A.P.Co-operative Societies Act. The learned Counsel also would

contend that there is no Fishermen Co-operative Society at Narasimhulagudem and the said Society of Narasimhulagudem became defunct even in the year 2005. The learned Counsel also would contend that as per the Bye-Laws of Kistapuram Fishermen Co-operative Society, Ganesh Kunta and Mynam Kunta are shown as area of operation of the Society and when once the Society is in existence within the local area of the Gram Panchayat the tanks to be given to the Society only. The learned Counsel also pointed out to the relevant portions of the counter affidavits filed by the respondents and would contend that even if the stand taken by them to be accepted, inasmuch as the procedure in accordance with law had not been followed, the Writ Petition has to be allowed.

4. The learned Assistant Government Pleader for Panchayat Raj had taken this Court through the counter affidavit filed by the 1st respondent and would maintain that the Divisional Panchayat Officer, Khammam specified that the Panchayat Secretary/Sarpanch of Gram Panchayat, Narasimhulagudem to conduct open auction in presence of Extension Officer (PR&RD), Kusumanchi Mandal, Khammam District duly following the norms prescribed by the Government in G.O.Ms.No.343, dated 10-4-1978. The learned Counsel also would submit that in view of the same, upset price was fixed by the 1st respondent by proceedings

Rc.No.Ex.A.1/2007/2005, dated 22-10-2005, but according to the Gram Panchayat the Narasimhulagudem Fishermen Co-operative Society rejected the offer of the Gram Panchayat on the ground that the upset price fixed by the 1st respondent is not feasible to the Society. The learned Counsel also pointed out to para-6 of the counter affidavit and would contend that in the light of the stand taken it is clear that Ganesh Kunta is falling within the jurisdiction of the Gram Panchayat of Narasimhulagudem.

5. Sri Prem Sagar, the learned Standing Counsel representing the 4th respondent had placed before this Court the District Gazette of Khammam and had pointed out that the tank falls within the Narasimhulagudem Gram Panchayat and hence there cannot be any dispute or controversy.

6. Sri Durga Prasad, the learned Counsel representing the 5th respondent had taken this Court through the counter affidavit filed by the 5th respondent and had explained certain factual details and would contend that the 5th respondent being the unsuccessful bidder in the auction in the event of Writ Petition being allowed, the 5th respondent would be put to serious loss.

7. Heard the Counsel on record.

8. It is stated that the Fishermen Co-operative Society, Kistapuram which was registered in the year 2001

with Registration No.N-160 covering two villages, namely Kistapuram and Narasimhulagudem. The said Society is covering two tanks i.e., Ganesh Kunta and Mynam Kunta with an extent of Acs.58-22 cents and Acs. 48-32 cents respectively as area of operation of the society. The Society was existing with 25 members as members of the society. The Society is administered/maintained smoothly without any complaint either from the members or from the respondents. The elections are conducted to the Society to constitute the Managing Committee in the year 2002. The Managing Committee consists of 9 members including the President and the Secretary. From the inception of the Society the Gram Panchayat had leased out the said two tanks every year to the Society as per the upset price fixed by the 1st respondent and accordingly the Society is exploiting fish in the tanks. It is known that there is drought for the last three years which was declared as a drought effected area as there was no water in the tanks. In view of the above fact the tanks were not leased out to the Society by the Gram Panchayat. Ganesh Kunta is situate in between Kistapuram and Narasimhulagudem villages. There is a proposal for bifurcation of Revenue villages and in that connection Ganesh Kunta to be shown in the Revenue village of Narasimhulagudem but the said proposal is still under consideration before the Government. The respondents 3 and 4 are under the impression that the

Ganesh Kunta had been transferred in the revenue records of Narasimhulagudem Revenue village and they want to conduct public auction for leasing out the Ganesh Kunta. As per the Bye Laws of the Kistapuram Fishermen Co-operative Society, Ganesh Kunta and Mynam Kunta are shown in the area of operation of the Society. When once the Society is existing within the local area of the Gram Panchayat the tanks to be given for lease to the said Society only. As per G.O.Ms.No.343/PR dated 10-4-1978 the Gram Panchayat shall lease out, except the sources set apart for washing of cloths by the local fishermen, the rights of fishing in minor irrigation tanks and the other tanks vested in it under clause 'b' of sub-section 1 of Section 65 and under sub-section 2 of Section 85 of A.P. Gram Panchayat Act 1964 without public auction to the Fishermen Co-operative Society of the local area. As per Rule 3(b) of G.O.Ms.No.343/PR the Executive Authority of the Gram Panchayat immediately on receipt of intimation referred to under clause 'b' of Rule 2 from Divisional Panchayat Officer shall send an intimation by Registered Post with Acknowledgement Due to the Fishermen Co-operative Society concerned requesting them to give their acceptance before 15 days from the date of receipt of intimation. The Executive Authority shall lease out the fishing rights to the Fishermen Co-operative Society for the upset price fixed by the Divisional Panchayat Officer. But to our misfortune the

respondents 3 and 4 had not chosen to lease out the fishing rights for the current year 2005-2006. The petitioner made a representation dated 7-12-2005 to the 1st respondent requesting to fix the upset price for the current year 2005-2006 and to see that the tank is leased out to the Society. The Fisheries Development Officer, Khammam addressed a letter to the 1st respondent on the representation of the petitioner Society vide Letter No.104/Co-ops./2005, dated 23-12-2005 requesting the 1st respondent to lease out the water bodies to the Fishermen Co-operative Society, Kistapuram after fixing the upset price by the Committee while following the Government orders issued from time to time in order to safeguard the livelihood of genuine fishermen of the petitioner Society. Despite the above representations and the proposals the respondents 3 and 4 had not responded and leased out the tanks to the petitioner Society. It is also further stated that there is no Fishermen Co-operative Society at Narasimhulagudem as on today since the Fishermen Co-operative Society, Narasimhulagudem became defunct in the year 2005. Apart from the above the Fishermen Co-operative Society, Narasimhulagudem was in existence earlier with one tank by name Galla Cheruvu. Unfortunately the respondents 3 and 4 had not followed the guidelines issued by the Government in G.O.Ms.No.343, dated 10-4-1978 to lease out the tanks to the existing Fishermen Co-operative Society

of the local area. It is also further stated that the Mynam Kunta and Ganesh Kunta had been shown in the Bye Laws of Fishermen Co-operative Society, Kitapuram. Though there is a proposal for bifurcation of the Revenue villages, the Ganesh Kunta in S.No.884 having Acs.58-29 guntas had not been transferred in the Revenue records of Narasimhulagudem. As per the aforesaid G.O.Ms.No.343, the tanks of Gram Panchayat shall be leased out to the Fishermen Co-operative Society within the local area and it is a fact that there is no Fishermen Co-operative Society either in the local area of Narasimhulagudem or Kistapuram except the petitioner Society. Ignoring the above facts the respondents 3 and 4 had proposed to lease out the tanks to one individual by name Pittala Venkanna. It is further stated that all the ms of the petitioner-Society are solely dependent on fishing operations. The action of the respondents, except the 2nd respondent, in not leasing out the fishing rights of Ganesh Kunta in favour of the petitioner-Society for the current year 2005-2006 is bad, arbitrary and contrary to G.O.Ms.No.343 and the same is violative of Articles 14, 19 and 21 of the Constitution of India apart from being in violation of principles of natural justice. Unless the Hon'ble Court interferes and issues a direction to the respondents for grant of fishing rights to the petitioner-Society for the year 2005-2006 the members of the petitioner-Society will be put

to great hardship.

9. In the counter affidavit filed by the 1st respondent it was stated that on receipt of proposals from the Secretary, Gram Panchayat, Narasimhulagudem in dated 20-10-2005 based on the Gram Panchayat resolution dated 15-10-2005 through Extension Officer (PR&RD), Kusumanchi the action had been taken to fix the upset price to Ganesh Kunta for the year 2005-06 to lease out fishing rights which falls in the limits of Gram Panchayat and accordingly orders had been issued by the Divisional Panchayat Officer, Khammam in Rc.No.A1/2007-2005 dated 22-10-2005 fixing the upset price to Ganesh Kunta for Rs.5000/- (Rupees five thousand only) for the year 2005-06 taking into consideration of last three years average income. It is also further stated that the Divisional Panchayat Officer, Khammam specified that the Panchayat Secretary/Sarpanch of Gram Panchayat, Narasimhulagudem to conduct open auction in presence of Extension Officer (PR&RD), Kusumanchi Mandal, Khammam District duly following the norms prescribed by the Government in G.O.Ms.No.343, dated 10-4-1978. It is also specified the priority should be given to existing Fisheries Co-operative Society, Narasimhulagudem as per the upset price fixed by the 1st respondent vide proceedings Rc.No.A1/2007/2005 dated 22-10-2005. According to the Gram Panchayat the Narasimhulagudem Fishermen Co-

operative Society rejected the Gram Panchayat offer on the ground that the upset price fixed by the 1st respondent is not feasible to the society. It is also further stated that the Gram Panchayat had conducted the public auction as per Rule 4 of G.O.Ms.No.343, dated 10-4-1978 for the fishing rights in the Ganesh Kunta of Gram Panchayat, Narasimhulagudem, Kusumanchi Mandal, Khammam District on 6-12-2005. The 5th respondent emerged as highest bidder by offering a sum of Rs.5500/- in the public auction on6-12-2005. It is also stated that the Fishermen Co-operative Society, Kistapuram having the registration No.N-160 is claiming that the Ganesh Kunta cheruvu to be given to their society by the Sarpanch, Gram Panchayat, Narasimhulagudem. In fact the Ganesh Kunta is not the area of operation of Kistapuram Gram Panchayat where as it falls within the area of Narasimhulagudem Gram Panchayat. The Narasimhulagudem is independent Gram Panchayat which is functioning since 1981 onwards. At para-6 of the counter affidavit of the 1st respondent it was stated that on reference made by the Fisheries Development Officer, Khammam, the Mandal Revenue Officer, Kusumanchi vide Rc.No.B/230/2005, dated 21-12-2005 had informed that the revenue records of Ganesh Kunta's Sy.No.884 having Acs.58.29 cents is under Narasimhulagudem Gram Panchayat and as such it is clear

that the Ganesh Kunta is falling within the jurisdiction of Gram Panchayat, Narasimhulagudem only. It is also further stated that the duty of the Divisional Panchayat Officer, Khammam is only fixation of upset price to the tank who are having ayacut below 100 acres for leading out the fishery rights as per the G.O.Ms.No.343, PR dated 10-4-1978. It is also stated that the petitioner approached the Hon'ble Court with malafide intention to grab the Ganesh Kunta.

10. The 2nd respondent filed a counter affidavit taking a stand that the Fishermen Co-operative Society, Kistapuram was registered in the year 2001 with Registration No.N-160 with 23 members covering Kistapuram village only and this Society is having two tanks, namely, Ganesh Kunta and Mynam Kunta. On receipt of representation from the petitioner's Society the concerned Fisheries Development Officer, Khammam had addressed the 1st respondent vide Lr.No.104/Co-op/2005, dated 23-12-2005 requesting to lease out the above two water bodies to the Fishermen Co-operative Society, Kistapuram for the 1415 Fasli year since the leasing of fishery rights of these two water sources are vested with the concerned Gram Panchayat. But the fishery rights of the these sources were not leased out in favour of the Fishermen Co-operative Society, Kistapuram though there are standing instructions from the Government vide G.O.Ms.No.343, PR dated 10-4-1978 that first preference should be given to the local

Fishermen Co-operative Society by the concerned Gram Panchayat while leasing out the fishery rights of the tanks which are under the control of such Gram Panchayat. Since these two water sources are in the area of operation of the Fishermen Co-operative Society, Kistapuram, the concerned Gram Panchayat should have followed the instructions issued in G.O.Ms.No.343, dated 10-4-1978, but in the instant case this was not done. This is the stand taken by the 2nd respondent in the counter affidavit.

11. Respondents 3 and 4 filed counter affidavits taking specific stand that Ganesh Kunta tank comes under the Narasimhulagudem village and the Gram Panchayat, Narasimhulagudem has right to lease out the tanks to the local Fishermen Co-operative Society. As per G.O.Ms.No.343, PR dated 10-4-1978 the 4th respondent Gram Panchayat informed to the Narasimhulagudem Fishermen Co-operative Society and offered on 15-11-2005 the Ganesh Kunta tank for Rs.5000/- for the year 2005-2006 as per the upset price fixed by the 1st respondent vide proceedings Rc.No.A1/2007/2005, dated 22-10-2005, but the Narasimhulagudem Fishermen Co-operative Society rejected the Gram Panchayat's offer on 30-11-2005 on the ground that the upset price fixed by the 1st respondent is not feasible to the society. Accordingly the Gram Panchayat conducted a public auction as per Rule 4 of G.O.Ms.No.343,

PR dated 10-4-1978. The 5th respondent is the highest bidder and the Ganesh Kunta tank was handed over to the 5th respondent for the year 2005-06. It is also further stated in para-3 of the counter affidavit filed by respondents 3 and 4 that Narasimhulagudem Fishermen Co-operative Society was established much earlier to the Fishermen Co-operative Society of Kistapuram. Kistapuram and the Narasimhulagudem were bifurcated long back and the Kistapuram Fishermen Co-operative Society has no right over the Ganesh Kunta tank belonging to the Narasimhulagudem. Narasimhulagudem Fishermen Co-operative Society is in existence and the 4th respondent Gram Panchayat offered to the local society as per the upset price fixed by the 1st respondent as per G.O.Ms.No.343. It is also stated that the members of the petitioner-Society are having many tanks for fishing operation. It was further stated that the 4th respondent Gram Panchayat strictly followed the rules in G.O.Ms.No.343, dated 10-4-1978 and conducted public auction after the local society rejected to take the lease of Ganesh Kunta. It is also further stated in para-5 of the counter affidavit that the members of the petitioner's Fishermen Co-operative Society are harassing the 5th respondent with their highhanded behaviour and burnt his hut on tank bund with a mala fide intention to grab the tank

illegally. The 5th respondent already invested huge amounts for seed, feed and maintenance of the tank. The 5th respondent also lodged a complaint to the police station against the members of the petitioner Society. The 5th respondent also made a complaint against the members of the petitioner Society for their highhanded behaviour to the Fisheries Development Officer, Khammam on 1-2-2006. The Fisheries Development Officer addressed a letter to the Sub-Inspector of Police, Kusumanchi vide Lr.No.104/Co-operation/2006, dated 1-2-2006 to stop the illegal fishing by anybody of the above said villages until further intimation from the department. Accordingly the 5th respondent acted as per the directions of the Fisheries Development Officer, Khammam. In substance this is the stand taken by the Gram Panchayat concerned.

12. In the counter affidavit filed by the 5th respondent, the 5th respondent narrated the details and had submitted that prior to the offer the Divisional Panchayat Officer by virtue of an order in proceedings Rc.No.A1/2007/2005 dated 22-10-2005 fixed the upset price for Rs.5000/- and the Gram Panchayat conducted public auction after a local Fishermen Co-operative Society rejected to take the lease. It is stated that the 5th respondent became the highest bidder in the said auction and purchased the fish seed and placed the same in the

tank and had invested more than Rs.50,000/- for purchase of fish seed and maintenance. In para-5 of the counter affidavit, the 5th respondent had given the details relating to the unruly behaviour of the members belonging to the petitioner-Society and the representation in relation thereto.

13. It is no doubt true that in the counter affidavit filed by the 2nd respondent in a way the 2nd respondent had taken a stand in favour of the stand taken by the writ petitioner. But however, in the light of the material placed before this Court, the District Gazette of Khammam and also in the light of the specific stand taken by the 1st respondent and respondents 3 and 4, there cannot be any doubt whatsoever that as far as the tank in question is concerned, the same falls within the limits of Gram Panchayat, Narasimhulagudem and hence the stand taken by the petitioner that the area of operation of the petitioner-Society would extend to both the tanks inclusive of the tank falling within the limits of Gram Panchayat, Narasimhulagudem also cannot be accepted. It is no doubt true that the petitioner had taken a stand that the Society within the limits of Gram Panchayat, Narasimhulagudem became defunct. This is a question of fact which cannot be gone into especially in the light of the stand taken in the counter affidavit of the 1st respondent. No doubt certain submissions were made by the Counsel representing the

writ petitioner that even it is doubtful where actually the tank in question is located. In the light of the District Gazette produced before this Court and the specific stand taken by the 1st respondent and also respondents 3 and 4, this Court is satisfied that the said stand that this tank falls within the limits of respondents 3 and 4 Gram Panchayat to be accepted and the further stand taken by the 1st respondent that an offer was made to the local Society and the local Society rejected that such an offer is not feasible and hence the procedure under G.O.Ms.No.343, dated 10-4-1978 had been followed, also may have to be accepted. In the light of the same, this Court is of the considered opinion that the Writ Petition is devoid of merit and accordingly the same shall stand dismissed. No order as to costs.

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Justice

P.S.Narayana

Date : 21-9-2006

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